
**PROTECTED BRITISH BUTTERFLIES: INTERPRETATION OF
SECTION 9 AND SCHEDULE 5 OF THE WILDLIFE AND
COUNTRYSIDE ACT 1981**

ALAN E. STUBBS

Chief Scientist Directorate, Nature Conservancy Council.

THE CONSERVATION of Wild Creatures and Wild Plants Act 1975 gave full protection to the Large Blue butterfly. There was no ambiguity. Taking, killing or injuring of specimens in the wild or any form of trading was illegal unless authorised by means of a licence issued by the Department of the Environment who consulted the Nature Conservancy Council before issuing licences.

This Act was succeeded by the Wildlife and Countryside Act 1981 which gave full protection to a wider list of invertebrates listed in Schedule 5. The Large Blue was joined by the Heath Fritillary, the Chequered Skipper and the Swallowtail. As a result of widely expressed concern over the scale and nature of trading, NCC subsequently recommended in its Quinquennial Review of Schedule 5 in 1986 that the trade in twenty-two scarce species of native butterflies be permitted only under licence. The purpose was to monitor the trade, without affecting an individual's wish to take animals for personal study. The same review recommended that the Chequered Skipper should no longer be afforded full protection. Instead it was placed on the list of species requiring a licence before being sold. This demonstrated the flexibility of the legislation to afford species only the legal protection which their status in the wild warranted.

The recommendation relating to these 22 species had to be implemented through an Order made by the Secretary of State for the Environment which came into effect on 28th June 1989. Implementation is carried out by the Department of the Environment's Wildlife Division in Bristol.

There have been many doubts and some inconsistencies, in the interpretation of the 1981 Act in relation to both the fully protected butterflies and the additional 22. In order to clarify the position DoE wrote to NCC to help clarify the situation for everyone.

- "1. Except for those which are captive-bred, all specimens of species of butterflies listed on Schedule 5 of the Wildlife and Countryside Act 1981 are covered by the relevant provisions of the Act regardless of stage or country of origin.*
2. *Consequently, sale of any specimens of the 22 partially protected and three fully protected species is illegal unless:*
- a. the specimens were bred in captivity or*
 - b. a sale licence issued by the Department is held."*

The following points need emphasis.

- It is illegal to take in the wild (even to net and immediately release) the three fully protected species without a licence. It is legal to *capture* all other British butterflies but responsible entomologists will of course recognise the need not to damage wild populations in doing this.
- “Wild” butterflies, i.e. those whose sale is restricted, are defined as butterflies which were, before they were taken, living wild. Note that this applies to wild-taken eggs, larvae and pupae as well as adults and to any bred on stage of a wild-caught individual (but not to its offspring).
- No licence is required to sell captive-bred stock.
- It is the full nominate species that is covered by the Act. Foreign wild-caught specimens require a licence to trade even if they are of a non-British sub-species.
- In any prosecution, the butterflies would be considered to be “wild-taken” unless *the trader* can show irrefutable evidence to the contrary. The maximum fine per specimen (even an egg) is £2,000.
- The word “sale” includes hire, barter, exchange etc.

The exact wording of the relevant part of the Wildlife & Countryside Act (Section 9(5)) is as follows:

“If any person—

sells, offers or exposes for sale, or has in his possession or transports for the purpose of sale, any live or dead wild animal included in Schedule 5, or any part of, or anything derived from, such an animal;
or

publishes or causes to be published any advertisement likely to be understood as conveying that he buys or sells, or intends to buy or sell, any of those things

he shall be guilty of an offence.”

In conclusion, this legislation has two purposes. First to ensure that wild populations of the three fully protected species remain safe from any collecting or trading. Secondly to monitor trading of the 22 scarcer species. Examples of unscrupulous exploitation may be few, but those that do occur need firm action. Responsible traders have no cause for alarm, indeed through the licensing system their critics will be fairly answered. It is the unacceptable elements of trading which will be most affected by the law.

NCC is confident that the vast majority in the entomological community will abide by these controls and help to ensure that others abide by them also.

This note has been agreed by DoE and is published so that all concerned have the same set of guidelines.

List of butterflies on Schedule 5 of the Wildlife and Countryside Act 1981 with respect to the provisions of Section 9(5) (Sale etc) only.

Argus, northern brown	<i>Aricia artaxerxes</i>
Blue, adonis	<i>Lysandra bellargus</i>
Blue, chalkhill	<i>Lysandra corydon</i>
Blue, silver-studded	<i>Plebejus argus</i>
Blue, small,	<i>Cupido minimus</i>
Copper, large	<i>Lycaena dispar</i>
Emperor, purple	<i>Apatura iris</i>
Fritillary, Duke of Burgundy	<i>Hamearis lucina</i>
Fritillary, Glanville	<i>Melitaea cinxia</i>
Fritillary, high brown	<i>Argynnis adippe</i>
Fritillary, marsh	<i>Eurodryas aurinia</i>
Fritillary, pearl-bordered	<i>Bolaria euphrosyne</i>
Hairstreak, black	<i>Strymonidia pruni</i>
Hairstreak, brown	<i>Thecla betulae</i>
Hairstreak, white letter	<i>Strymonidia w-album</i>
Heath, large	<i>Coenonympha tullia</i>
Ringlet, mountain	<i>Erebia epiphron</i>
Skipper, chequered	<i>Carterocephalus palaemon</i>
Skipper, Lulworth	<i>Thymelicus acteon</i>
Skipper, silver-spotted	<i>Hesperia comma</i>
Tortoiseshell, large	<i>Nymphalis polychloros</i>
White, wood	<i>Leptidea sinapis</i>

Fully protected butterflies on Schedule 5

Blue, large	<i>Maculinea arion</i>
Fritillary, Heath	<i>Mellicta athalia</i> (otherwise known as <i>Melitaea athalia</i>)
Swallowtail	<i>Papilio machaon</i>

Social Wasps *Vespula* spp. attacking *Aeshna* hawker dragonflies and Silver Y moth *Autographa gamma* L. (Lep.: Noctuidae)

Early in 1989, I was asked by the editor of the BBC *Wildlife Magazine* to write an answer to a question from a reader, Mr Ashley Cox of Hemel Hempstead, Hertfordshire, concerning his observation, on 10th August 1988, of a social wasp *Vespula* sp. (Hym.: Vespidae) apparently making a frenzied attack upon a Migrant Hawker dragonfly *Aeshna mixta* Latreille (Odon.: Aeshnidae) which had fallen, struggling, on the lawn in his garden. In my published reply *BBC Wildlife* 7 (1989): 226, I remarked that I had not personally witnessed such an attack on a large dragonfly and had also been unable, in the time available, to find any references of similar attacks in the literature. Recently, however, I chanced to come upon a note of mine, which I had long forgotten, published under the Wildlife and Tame